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RECENT IMPORTANT DECISIONS

ADMINISTRATORS—RIGHT TO CONVEY INCHOATE HOMESTEAD.—One Morrison, duly qualified, settled upon unsurveyed government land with the intention of taking it as a homestead; after settlement thereon he proceeded to improve it, built a dwelling house, barn and woodshed, and cleared, fenced, plowed and cultivated about 25 out of the 40 acres of the tract. The said improvements and the right to the possession of said land constituted the whole estate of Morrison who died intestate, before his right to a patent was consummated, without leaving any heirs who were citizens of the United States. Plaintiff immediately took possession of the land with the intention of making it a homestead, and began improving and cultivating it. The administrator of Morrison, for the purpose of paying debts and expenses of administration, sold the land to defendant who ousted the plaintiff. *Held*, that the administrator had no right to sell for the benefit of creditors, and that the land was open for the first squatter, in this case the plaintiff. *Towner v. Rodegeb* (1903), — Wash. —, 74 Pac. Rep. 50.

There are not many cases covering this phase of the law. The only ones cited by the court which seem to be in point are *Gjerstadengen v. Van Duzen*, 7 N. D. 612, 76 N. W. Rep. 233, 66 Am. St. Rep. 679, and *Bowen v. Burnett*, 1 Pin. (Wis.) 658, neither of which refers to any authorities upon which they are based. Under the decisions of the Land Department concerning an earlier law, 9 Land Decisions, Dep. Int. 599, it is held that an executor or administrator has no authority to consummate the inchoate claim of a deceased homesteader for the benefit of creditors. On the other hand, *Burch v. McDaniel*, 2 Wash. T. 58, 3 Pac. Rep. 586 and *Grover v. Hawley*, 5 Cal. 486, hold that the possessory rights of a homesteader who has only an inchoate right to a patent are transferable. Sec. 2291 U. S. Rev. Stat. (1901) gives the settler the power to devise his rights, and if he can devise them there seems to be no good reason why in the absence of qualified heirs the creditors should not have the benefit of them. Where the entire estate consists of the improvements on the intended homestead and the inchoate right to it, there is no apparent justification for preferring outsiders to bona fide creditors. If the case is correctly decided there is a looseness in the law which ought to be remedied.

AGENCY—SCOPE OF AUTHORITY—SUNDAY CONTRACT.—An agent was authorized to trade a horse. He consummated and fully executed the transaction on Sunday, in violation of the Sunday laws. The principal sued to replevy the horse, claiming that the illegal act of the agent did not bind her. *Held*, that she could not recover, as the act, although unlawful, was within the scope of the authority. *Richards v. Richards* (1903), — Md. —, 56 Atl. Rep. 397.

On the question whether recovery of chattels will be allowed where the sale or exchange is in violation of Sunday laws, the authorities are in direct conflict. Some courts will aid the plaintiff in disaffirmance, but the majority of the courts will leave the parties where they are found. **MECHEM, SALES, § 1053.** The majority rule seems to be the theory of the principal case. The fact that an agent intervenes is of no moment, for the principal may be liable for acts penal and even criminal. *Hall v. R. R. Co.*, 44 W. Va. 36; *State v. Kuttelle*, 110 N. C. 560. The test is the scope of authority. The decision of the principal case appears, therefore, to be sound.

ASSIGNMENT FOR THE BENEFIT OF CREDITORS—ACTION TO SET ASIDE—ELECTION—RES ADJUDICATA.—A firm of carriage manufacturers made an